IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 42 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHBHAI VALIBHAI RATHOD

Versus

SHILPA MUKESHBHAI RATHOD

Appearance:

MR HARIN P RAVAL for Petitioner

MS SADHANA SAGAR for Respondent No. 1

MR ST MEHTA, A.P.P. for Respondent No.2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/06/2001

ORAL JUDGEMENT

1. Having heard Shri Harin P. Raval, learned Counsel for the revisionist, Shri S.T.Mehta, learned A.P.P. for respondent No.2 and Ms.Sadhana Sagar, as amicus curiae, for respondent No.1, I feel that this

Revision can be finally disposed of at the admission stage.

2. The revision is directed against the order of learned Sessions Judge, Rajkot dated 16.1.2001 under which he has modified the order of the Judicial Magistrate, Rajkot, enhancing the interim maintenance from Rs.300/- per month to Rs.500/- per month and further awarding Rs.2000/- as cost of revision and Rs.2000/- as cost of maintenance Application u/s.125 of Cr.P.C.

3. Shri Raval has rightly contended that the learned Sessions Judge had no jurisdiction to entertain and decide the Revision inasmuch as it was directed against interlocutory order and not a final order. What happened in this case was that an application u/s. 125 Cr.P.C. was filed by the opposite party against the husband revisionist in the Court of Judicial Magistrate, Rajkot. The said Judicial Magistrate, after considering the material in support of application for interim maintenance, fixed Rs.300/- per month as interim maintenance. This order was to operate during the pendency of Application u/s.125 Cr.P.C. In that view of the matter the order of learned Magistrate was purely interim and interlocutory order which was not revisable. The learned Sessions Judge has therefore committed jurisdictional error in entertaining and deciding the Criminal Revision against interlocutory order.

4. The Sessions Judge seems to have been of the view that he was deciding the matter finally and has awarded Rs.2000/- as cost of revision and Rs.2000/- as cost of maintenance Application u/s.125 Cr.P.C. Application u/s. 125 Cr.P.C. is still pending before the learned Magistrate and order for cost, etc. has to be passed by him while finally disposing of such application as provided u/s.126(3) Cr.P.C. The Sessions Judge was, therefore, obviously in error in awarding cost of Rs.2000/- towards application u/s.125 Cr.P.C.

5. The learned Sessions Judge was also in error in awarding cost of Rs.2000/- against the revisionist here in this court and opponent before him despite the fact that the revisionist was opposing before the learned Sessions Judge that the revision itself was incompetent.

6. For the aforesaid reasons the revision succeeds and is hereby allowed. The impugned order dated 16.1.2001 of Sessions Judge, Rajkot is hereby quashed and set aside.

sd/-

Date : June 13, 2001 (D. C. Srivastava, J.)

sas